

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

FAIRFIELD SENTRY LIMITED, et al.,

Debtor in Foreign
Proceedings.

Chapter 15 Case

Case No. 10-13164 (CGM)

Jointly Administered

FAIRFIELD SENTRY LTD. (IN
LIQUIDATION), et al.,

Plaintiffs,

v.

ABN AMRO Schweiz AG a/k/a
AMRO (SWITZERLAND) AG, et al.,

Defendants.

Adv. Pro. No. 10-03635 (CGM)

**MOTION TO FILE UNDER SEAL SLENDY GAY ELSBERG PLLC'S MOTION TO
WITHDRAW AS COUNSEL**

Selendy Gay Elsberg PLLC (“SGE”) respectfully moves pursuant to Local Bankruptcy Rule 9018-1 for an Order permitting SGE to file under seal its memorandum of law and declaration in support of its motion to withdraw as counsel for Plaintiffs Fairfield Sentry Ltd. (In Liquidation); Fairfield Sigma Ltd. (In Liquidation); Fairfield Lambda Ltd. (In Liquidation); Kenneth Krys, solely in his capacity as Foreign Representative and Liquidator thereof; and Greig Mitchell, solely in his capacity as Foreign Representative and Liquidator thereof (together with Kenneth Krys, the “Liquidators”), in the above-captioned case.

In advance of filing this motion, SGE sought, but did not receive, the Liquidators’ consent to withdraw.

“[D]ocuments in support of motions to withdraw as counsel are routinely filed under seal where necessary to preserve the confidentiality of the attorney-client relationship between a party

and its counsel, and ... this method is viewed favorably by the courts.” *Thekkek v. LaserSculpt, Inc.*, 2012 WL 225924, at *3 (S.D.N.Y. Jan. 23, 2012) (quoting *Team Obsolete Ltd. v. A.H.R.M.A. Ltd.*, 464 F. Supp. 2d 164, 166 (E.D.N.Y.2006)); *see also* Committee Note to Local Civil Rule 1.4. In *Thekkek*, the court “reviewed *in camera* the affidavit and memorandum of law in support of the motion” to withdraw and determined that the “confidential information they contain pertains only to the attorney-client relationship.” 2012 WL 225924, at *3.

SGE is moving to withdraw due to the Liquidators’ breach of the terms of the engagement letter entered into by SGE and the Liquidators and the consequent irreparable breakdown of the attorney-client relationship. Sealing will enable the Court to resolve SGE’s motion without disclosing confidential and privileged communications between SGE and the Liquidators, which may also prejudice the Liquidators. *See* N.Y. Rules Prof'l Conduct 1.16(e) (“[A] lawyer shall take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client. . . .”).

This Sealing Motion therefore seeks the Court’s approval for leave for the following proposed sealing procedure for SGE’s motion to withdraw:

1. Any confidential or privileged information related to the relationship between SGE and the Liquidators shall be filed under seal.
2. SGE will provide unredacted versions of its memorandum of law and declaration to the Clerk of Court through electronic means, such as a secure USB drive.
3. Material sealed in connection with SGE’s motion to withdraw will remain under seal for the pendency of the proceeding absent further order of the Court, and need not be served on Defendants.

4. SGE will be responsible for retrieving the unsealed versions of such information at the end of the proceeding or, if appropriate, moving to unseal that material.
5. This sealing procedure is without prejudice to the rights of any party in interest to file a separate sealing motion addressed to any materials not covered by the procedure set forth herein, or to seek to unseal the sealed material, or any portion thereof.

Accordingly, SGE respectfully requests that the Court grant this Sealing Motion. A proposed order to that effect has been submitted to eOrders, consistent with this Chambers' Rules.

Dated: New York, NY
May 13, 2023

SELENDY GAY ELSBERG PLLC

By: /s/ *David Elsberg*
David Elsberg
SELENDY GAY ELSBERG PLLC
1290 Avenue of the Americas
New York, NY 10104
Tel: 212-390-9000
delsberg@selendygay.com

Attorneys for the Liquidators